IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.Nos.6396 and 12174 of 1998

WRIT PETITION No.6396 of 1998

Between:

T. Pundarikam, s/o Lakshmaiah, 58 yrs.,
Working as Junior Accounts Officer,
APSEB, Office of the Superintending
Engineer, Operation Circle, Warangal,
Warangal district

..... PETITIONER

AND

Andhra Pradesh State Electricity Board,
Rep. by its Secretary, Vidyuth Soudha,
Hyderabad-500 004.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction especially one in the nature of Mandamus : (i) compelling the respondent to consider my case for promotion to the posts of Assistant Accounts Officer/Accounts Officer/Senior Accounts Officer with effect from the date when his junior was promoted to the said posts; (ii) to grant all consequential benefits flowing out of the prayer No.1; and (iii) to grant such other relief or reliefs as the Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: Mr. V.JOGAIAH SARMA
Counsel for the Respondent : Mr. S.RAVINDRANATH

WRIT PETITION No.12174 of 1998

Between:
T.Pundarikam s/o Lakshmaiah, 58 yrs.,
Working as Junior Accounts Officer,
APSEB, Office of the Superintending
Engineer, Operation Circle, Warangal,
Warangal district

..... PETITIONER

AND

1. Superintending Engineer, APSEB,
   Operation, Warangal.
2. Andhra Pradesh State Electricity Board,
   rep.by its secretary, Vidyuth Soudha, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction especially one in the nature of Mandamus: (i) declaring the Memo No.SE:OP:WGL:ESTT:U1:No.382:98, dated 31-3-1998 as illegal and without jurisdiction and set aside the same; (ii) compel the respondents to pay salary and other allowances due from 4-2-1983 to 22-7-1984 and 4-11-1984 to 9-12-1986 after deducting the amounts already paid for that period; (iii) to pay the salary and other allowances for the period from 1-4-1988 to 14-7-1989 and 16-12-1983 to 7-9-1984 as if he is inservice; (iv) compel the respondents to release all the increments and pay all the arrears upto date; and (v) to grant such other relief or reliefs as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: Mr.V.JOGAIAH SARMA

Counsel for the Respondent : Mr.S.RAVINDRANATH

The Court made the following :

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COMMON ORDER:

While Writ Petition No.6396 of 1998 is filed to direct the respondent -A.P.State Electricity Board – to consider the case of the petitioner for promotion to the posts of Assistant Accounts Officer/Accounts Officer/Senior Accounts Officer with effect from the date when his junior was promoted to the said posts and for all consequential benefits flowing out of the said promotions, Writ Petition No.12174 of 1998 has been filed to declare the Memo dated 31-3-1998 issued by the 1st respondent-Superintending Engineer, APSEB, Operation, Warangal as illegal and consequently direct the respondents to pay salary and other allowances due to him for the period from 4-2-1983 to 22-7-1984, 4-11-1984 to 9-12-1986, 1-4-1988 to 14-7-1989 and 16-12-1993 to 7-9-1994 and also release the increments and pay all arrears upto date.

W.P.No.12174 of 1998

The short question that falls for consideration in this writ petition is whether the Memo dated 31-3-1998 of the Superintending Engineer, Operation, Warangal is liable to be interfered with ?

The impugned Memo was issued in pursuance of Judgment of a

Division Bench of this Court in W.P.No.18125 of 1993, dated 27-4-1994, wherein it was held as under:

> "During the pendency of the writ petition, final orders were issued on 10.12.1993 removing the petitioner from service. As we have set aside the show cause notice consequent upon which the petitioner was removed, necessarily, the dismissal order shall not be allowed to hold the field. We, therefore, set aside the dismissal order dated 10.12.1993. Depending upon the view taken by the Superintending Engineer in accordance with the aforesaid direction, appropriate orders will be passed as to how the period during which the petitioner was out of service in consequence of the order of dismissal should be treated. The petitioner shall be reinstated into service forthwith."

Though this case has a chequered history, we need not go into all the details except noting a few facts, which are necessary for adjudication of the *lis* in this writ petition.

Petitioner while working as a Junior Accountant in the Office of the Superintending Engineer, Operation Circle, Warangal was suspended from service on 3-2-1983 and was reinstated on 23-7-1984 pending enquiry into the matter. He was again suspended with effect from 4-11-1984. While issuing a show cause notice dated 8-12-1986 proposing to reduce his pay by 10 grades, he was reinstated into service on 9-12-1986. Thereafter, another show cause notice was issued on 20-7-1987 proposing to remove him from service. Aggrieved by the same, he filed W.P.No.4755 of 1988. Interim stay was granted in the said writ petition on 1-4-1988. But, in the meanwhile, an order was passed by the management on 30-3-1988 removing him from service. Questioning the said removal order, he filed W.P.No.7322 of 1988, which was allowed on 14-9-1988 setting aside the removal order dated 30-3-1988. In view of the said order, W.P.No.4755 of 1988 was closed as having become infructous. Against the Order dated 14-9-1988 passed in W.P.No.7322 of 1988, the management carried the matter in appeal being Writ Appeal No.1702 of 1988 and obtained interim suspension of the said Order dated 14-9-1988. Petitioner also filed Writ Appeal No.1709 of

1988 against the Order dated 14-9-1988 insofar as it went against him. On 20-6-1989, a Division Bench of this Court passed orders in W.A.No.1709 of 1988 directing the reinstatement of the petitioner or on before 15-7-1989. On 15-7-1989, the petitioner was reinstated into service. Further, W.A.No.1702 of 1988 filed by the management was dismissed as withdrawn. Though W.P.No.7322 of 1988 was allowed and it became final in W.A.No.1709 of 1988, Memo dated 10-1-1990 was issued calling upon him to explain as to why disciplinary action should not be taken against him. Questioning the said Memo, he filed W.P.No.616 of 1990, which was disposed of by a Division Bench of this Court on 10-9-1993 holding that the disciplinary authority had to ignore the disciplinary committee proceedings dated 28-3-1987 and should proceed with earlier show cause notice dated 8-12-1986. Thereafter, another show cause notice was issued on 19-11-1993 stating that the writ petition was dismissed and as to why he should not be removed from service. Being aggrieved by the said show cause notice, he filed W.P.No.18125 of 1993. During the pendency of the said writ petition, on 10-12-1993 again an order of removal was passed and the petitioner was relieved of his duties on 16-12-1993. Finally, the said writ petition was allowed on 27-4-1994 setting aside the removal order dated 10-12-1993 and ordered reinstatement of the petitioner forthwith. Thereafter, the matter was carried to the Supreme Court in S.L.P.No.12809 of 1994, which was dismissed on 8-10-1996. In the meanwhile, in view of filing of Contempt Case No.351 of 1994, the petitioner was reinstated into service and joined duty on 8-9-1994.

As noted above, the order dated 27-4-1994 in W.P.No.18125 of 1993 came to be passed by a Division Bench of this Court. While disposing of the said Writ Petition, liberty was given to the Superintending Engineer, Operation Circle, APSEB, Warnagal to

issue fresh show cause to the petitioner proposing punishment of reduction by 10 places in the seniority list and after receiving explanation from him, consider whether it is a matter in which he should impose the major punishment of reduction in the seniority list and if he comes to that conclusion, he should submit the matter for the concurrence of the disciplinary committee in accordance with the proviso to Regulation 10(2). If, on the other hand, on the basis of the explanation offered by the petitioner and after considering the entire record, the Superintending Engineer comes to conclusion that it is not a matter warranting imposition of major punishment of reduction by 10 places in the seniority list, it is open to him to impose a minor punishment without obtaining concurrence of the disciplinary committee. This exercise should be completed as expeditiously as possible, in any event, not later than six months from the date of receipt of the said order and further proceeded to hold as noted above. Thus, it was also left open to the Superintending Engineer depending upon the view to be taken by him in accordance with the aforesaid directions, as to how the period during which the petitioner was out of service in consequence of the order of removal should be treated and the petitioner should be reinstated forthwith. Final Proceedings were issued on 10-10-1997 by the Superintending Engineer, Operation Circle, Warangal imposing the punishment of reduction of 10 ranks in the seniority list in the cadre of Accountant/Junior Accounts Officer and recovering an amount of Rs.4678.78 ps towards interest and surcharge on the money misappropriated. Subsequently, Memo dated 31-3-1998 was issued by the Superintending Engineer, treating the period of removal from service from 1-4-1988 to 14-7-1989 and 16-12-1993 to 7-9-1994 as *dies non.* Apart from this, the period of suspension from 4-2-1983 to 22-7-1984 and 4-11-1984 to 9-12-1986 was directed to be

treated as such limiting the pay and allowances to the subsistence allowance already paid. Aggrieved by the same, this Writ Petition is filed.

A detailed counter affidavit has been filed by the Assistant Secretary (Legal) of the A.P. Transco on behalf of the respondents denying the allegations made by the petitioner, particularly, the allegation that the petitioner was kept out of service illegally from 1-4-1988 to 14-7-1989 and 16-12-1993 to 7-9-1994. It is asserted that the litigation was under continuous process in this Court and the Supreme Court and the disciplinary authority took a decision treating the said period as *dies- non* after examining all points and inasmuch as no work was extracted from him. In nowhere, directions were issued by this Court or the Apex Court as to how the period of absence should be treated. Petitioner was issued with a show cause notice pursuant to the Judgment dated 8-11-1996 of the Supreme Court in Civil Appeal No.8925 of 1994. Petitioner was approaching the Court of law at every stage and the finalization was delayed due to the pending litigation in the Courts. The contention of the petitioner that suspension is also a major punishment is not correct. The punishment imposed and the treatment of the absence period was quite within the jurisdiction of the disciplinary authority.

Insofar as treating the suspension period as such is concerned, it cannot be interfered with by this Court since it was being regulated and the said suspension period was never a matter of dispute for the purpose of salary etc. Therefore, it cannot be said that taking such a decision limiting the pay and allowances to the subsistence allowance already paid for that period flows as a consequence of the orders of Division Bench of this Court in W.P.No.616 of 1990, dated 10-9-1993 and W.P.No.18125 of 1993, dated 27-4-1994.

Further, the subject matter of W.P.No.18125 of 1993 was only

removal of the petitioner from service on 10-12-1993 and liberty was given to pass appropriate orders as per the view taken by the Superintending Engineer as to how the period during which the petitioner was kept out of service be treated. Therefore, even the regularization of the period from 1-4-1988 to 14-7-1989 was also not the consequence that flow out of the Judgment of this Court in W.P.No.18125 of 1993, dated 27-4-1994. Hence, as per the directions noted above, the only period, which the authorities were supposed to take care of was between 16-12-1993 and 7-9-1994, since the petitioner was removed from service and the said removal order was held to be illegal. The matter was left to the wisdom of the authority concerned to treat the said period as per law. But, unfortunately, the Superintending Engineer took an extreme view of the matter and treated the period from 16-12-1993 to 7-9-1994 as *dies non,* which is not correct and it cannot be said that such an order was expected from the language used by this Court in the above said Judgment while setting aside the removal order passed by the authority. Therefore, I am of the considered opinion that the petitioner was entitled for full back wages for the period from 16-12-1993 to 7-9-1994 as per eligibility. An extreme step was taken to treat the period from 16-12-1993 to 7-9-1994 as *dies non*. Once the removal order dated 10-12-1993 was set aside, the petitioner is entitled for full back wages, since this was the subject matter of W.P.No.18125 of 1993. Therefore, the impugned Memo dated 31-3-1998 to the extent indicated above is set aside and the respondents are directed to treat the period from 16-12-1993 to 7-9-1994 as on duty and pay salary and other allowances as per the eligibility of the petitioner, within a period of two months from the date of receipt of a copy of this order.

Accordingly, the writ petition is disposed of. No costs.

W.P.No.6396 of 1998

Insofar as this writ petition is concerned, it may not be necessary for this Court to go into all the details. Petitioner was initially suspended from service on 4-2-1983. Further, his services were sought to be removed by issuing a show cause notice, which was a subject matter of a writ petition. Since the writ petition was disposed of, second show cause notice was issued and that was also a subject matter of another writ petition. After disposal of that writ petition, third show cause notice was issued. Finally, in view of the orders passed in W.P.No.18125 of 1993, dated 27-4-1994, petitioner was reinstated into service. Thus, the petitioner was not in active service right from 4-2-1983 to 27-4-1994 except for brief spells in between. Further, in the order impugned in W.P.No.12174 of 1998, the period of suspension was treated as such and the period for which the petitioner was kept out of service was treated as *dies non.* Ultimately, final order was passed imposing punishment of reduction by 10 stages. Further, petitioner attained the age of superannuation and retired from service and now he is more than 64 years. Therefore, in view of this background as well as a detailed consideration of W.P.No.12174 of 1998, I am of the considered opinion that the petitioner is not entitled for any relief as prayed for, since the post of Assistant Accounts Officer for which the promotion is sought, is a selection post and definitely all these factors had to be placed before the selection committee. It is not appropriate to direct the respondent to constitute a selection committee and decide the promotion of the petitioner at this length of time.

Accordingly, the Writ Petition is dismissed. No order as to costs.

-9-2004

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, Andhra Pradesh State Electricity Board,
   Vidyuth Soudha, Hyderabad.
2. Superintending Engineer, APSEB,
   Operation, Warangal, Warangal district.
3. 2CD copies.